

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 92651-001-SF

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 14th day of October 2008
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On August 13, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* The Commissioner reviewed the material submitted and accepted the request on August 20, 2008.

Under Section 2(2) of Act 495, MCL 550.1952(2), the Commissioner conducts this external review as though the Petitioner was a covered person under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.*

The Commissioner assigned the case to an independent review organization (IRO) because it involved medical issues. The IRO provided its analysis and recommendations to the Commissioner on August 29, 2008.

II

FACTUAL BACKGROUND

The Petitioner receives health care benefits from Blue Cross Blue Shield of Michigan

(BCBSM) through XXXXX University, a self-funded account. Coverage is governed by the language of BCBSM's *Master Medical Supplemental Benefit Certificate Catastrophic Coverage Plan Option 5* (the certificate).

On August 25, 2007, the Petitioner was transported via air ambulance from XXXXX, to XXXXX. The charge for this service was \$13,460.00.

BCBSM denied payment for the Petitioner's air ambulance transport. The Petitioner appealed. After a managerial-level conference on June 3, 2008, BCBSM did not change its decision and issued a final adverse determination dated June 11, 2008.

III ISSUE

Did BCBSM properly deny coverage for the Petitioner's August 25, 2007, air ambulance care?

IV ANALYSIS

Petitioner's Argument

While vacationing in XXXXX the Petitioner experienced a fever and back pain. He went to a hospital emergency room in XXXXX twice because the fever persisted. He was admitted to the hospital on August 24, 2007, when a bacterial infection was found in a blood culture.

The transfer by air ambulance from XXXXX to XXXXX was required so the Petitioner could be treated at XXXXX Hospital where he had been treated previously and which had his medical records. The Petitioner says the etiology of gram-negative sepsis could not be determined in the XXXXX hospital in a timely manner; the Petitioner was told there would be a 48 to 72 hour wait at a minimum. At XXXXX Hospital they were able to locate the problem and he was discharged in only a few more days. The Petitioner believes that it was the best medical practice to compare studies with previous ones only available at XXXXX.

According to the Petitioner, ground ambulance would have required approximately 16 hours

which could have resulted in further complications. The Petitioner believes his air ambulance transport was medically necessary and reduced his length of stay in the hospital. He argues this service is a covered benefit and BCBSM should pay for it.

BCBSM's Argument

BCBSM indicates that under the terms of the certificate, air ambulance is a covered benefit if it is medically necessary and if the patient is transported to the nearest facility capable of treating the patient's condition.

BCBSM's medical consultants reviewed the Petitioner's case and determined that the documentation does not support the medical necessity of air transfer from XXXXX to XXXXX. If the hospital in XXXXX was not capable of treating his bacteremia condition he could have been transferred by ground ambulance to a facility in XXXXX.

BCBSM does not believe the air ambulance transport was medically necessary and therefore it is not a covered benefit.

Commissioner's Review

Regarding air ambulance services, the certificate says (page 3.13):

NOTE: When air ambulance services are required, services are payable if:

- The patient is transported to the nearest facility capable of treating the patient's condition
- The use of an air ambulance is medically necessary **and**
- The provider is licensed as an air ambulance service and is not a commercial air carrier.

The question of whether the Petitioner's August 25, 2007, air ambulance transport was medically necessary was presented to an IRO for analysis as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO physician reviewer is certified by the American Board of Internal Medicine with a subspecialty in cardiovascular disease (diplomate); is published in the peer reviewed medical literature; and is in active practice.

The IRO report said:

This is a case of a seventy four (74) year old male with a history of regurgitation who was admitted to a hospital in XXXXX with bacteremia. He had significantly elevated liver enzymes, but was otherwise clinically and hemodynamically stable. In reviewing the records, this reviewer cannot find a medically valid reason for the air ambulance flight from XXXXX to XXXXX. The [Petitioner] was hemodynamically stable and could have been cared for at a local hospital. Even if further work up had revealed evidence of endocarditis, he was still stable and could have initially received antibiotic therapy locally and further outpatient therapy in XXXXX.

* * *

If the local hospital did not have the expertise to care for him, then the [Petitioner] should have been transferred to the closest hospital which had the appropriate services/facilities for the [Petitioner's] condition. Many of the XXXXX hospitals in the state of XXXXX could have accomplished this goal.

The IRO reviewer concluded:

It is the opinion of this reviewer that the air ambulance transport was not medically necessary for [the Petitioner's] condition.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case. The Commissioner accepts the IRO reviewer's conclusion and finds that the Petitioner's August 25, 2007, air ambulance service was not medically necessary and therefore not a covered benefit under the certificate.

V ORDER

Respondent BCBSM's June 11, 2007, final adverse determination is upheld. BCBSM is not required to cover the Petitioner's August 25, 2007, air ambulance transport since it was not medically necessary and therefore not a covered benefit under the terms of the certificate.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later

than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.